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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Nest Two Ventures, LLC

v.

Joshua Capps and Rachel Capps

**Appeal from Jefferson Circuit Court
(CV-16-337)**

EDWARDS, Judge.

Nest Two Ventures, LLC ("NTV"), an Oregon limited liability company, appeals from orders entered by the Jefferson Circuit Court ("the trial court") purporting to dismiss NTV's unlawful-detainer claim against Joshua Capps and

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Rachel Capps ("the Cappses") and declaring that NTV's motion for a summary judgment was moot.

The real property at issue in this case is located in Jefferson County in the city of Leeds. Based on the allegations in the record, the property was conveyed to Lynn Brantley pursuant to a general warranty deed that was recorded in the Jefferson Probate Court ("the probate court") on September 30, 2010. Brantley purchased the property using the proceeds from a loan from The Hometown Bank of Alabama ("the HBA"). Payment of the loan was secured by a mortgage that Brantley executed in favor of the HBA and that was recorded in the probate court.

Brantley purportedly failed to pay the ad valorem taxes on the property for 2011. The property was sold to the State of Alabama for the nonpayment of taxes on May 22, 2012. Notice of the sale allegedly was sent to Brantley at the address for the property.

On January 31, 2014, NTV purportedly purchased the tax-sale certificate for the property from the State of Alabama. Thereafter, NTV allegedly sent a letter to the Cappses, who were purportedly leasing the property from Brantley, who is

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Rachel Capps's mother. The letter stated that NTV owned the property and that the monthly rental payments should thereafter be paid to NTV. NTV also provided the Cappses with a proposed lease to the property at a monthly rental rate of \$950. According to NTV, the Cappses did not execute the lease or make any arrangement to pay rent to NTV.

On September 16, 2015, NTV allegedly sent Brantley a demand for possession. The demand for possession was sent to the address of the property via certified mail, and NTV also sent a notice regarding the demand for possession to the HBA via certified mail. The demand for possession addressed to the HBA was delivered, but the demand for possession addressed to Brantley was returned by the United States Postal Service as "undelivered."

On October 8, 2015, NTV attempted to serve the "Current Tenant" of the property with a notice stating that past-due rent totaled \$7,600 and warning that the tenancy would terminate on October 16, 2015, if the past-due rent was not paid to NTV by that date. The notice allegedly was posted at the property, and a copy of the notice was allegedly mailed to the "Current Tenant" via certified mail, although that mailing

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was returned as "undelivered." Also on October 8, 2015, Joshua Capps sent an e-mail to counsel for NTV stating that he had repeatedly tried unsuccessfully to contact counsel for NTV and was concerned NTV was a "scamming operation." Joshua Capps also stated in the e-mail that he had a "lease to own contract" for the property with Brantley.

After the time for redemption of the property allegedly had passed, NTV presented its tax-sale certificate to the probate court. On October 28, 2015, the probate court issued NTV a tax deed to the property. Thereafter, NTV sent the Cappses a letter offering to settle the dispute about the property and to allow Brantley to redeem the property, but the Cappses allegedly did not respond to NTV's offer.

On June 17, 2016, the HBA and Brantley commenced an action in the trial court seeking to quiet title to the property and to redeem the property ("the redemption action"); the redemption action was assigned case number CV-16-902228. The HBA and Brantley requested that the trial court enter a judgment declaring that Brantley owned the property, subject to the HBA's mortgage, and that it enter an order allowing the HBA, as mortgagee, to redeem the property pursuant to Ala.

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Code 1975, § 40-10-120, or the HBA and Brantley to redeem the property pursuant to Ala. Code 1975, § 40-10-83. The HBA and Brantley further sought a judgment declaring that NTV's tax deed is void. NTV was named as the defendant in the redemption action. Paragraph 4 of the HBA and Brantley's complaint alleged, in part: "Upon information and belief, [NTV] is not registered as a foreign entity with the State of Alabama."

On June 22, 2016, NTV filed a complaint in the Jefferson District Court ("the district court"), pursuant to Ala. Code 1975, § 35-9A-101 et. seq. ("the Landlord and Tenant Act"), and Ala. Code 1975, § 6-6-310 et seq. ("the Unlawful Detainer Act"); that action was assigned case number DV-16-902777 ("the unlawful-detainer action"). NTV's complaint was filed using an Alabama Unified Judicial System Form CS-59, titled "Statement of Claim Eviction/Unlawful Detainer," along with several attached pages. The complaint "demand[ed] the right to possession [of the property] from the [Cappses]" and included claims for "unpaid rent and late charges, plus attorney's fees (if applicable), and other charges," and for "future rent and late charges ... through the date [NTV]

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obtains possession of the ... property." The pages attached to the complaint included allegations that the Cappses owed NTV over \$40,000 in past-due rent, and the prayer for relief requested, in part, that the district court "[f]ind [the Cappses] liable for unlawful detainer," "issue a writ of possession in favor of [NTV]," and [f]ind [the Cappses] liable for unpaid rent and attorney's fees, and court costs."

On September 1, 2016, NTV filed in the district court a motion to consolidate the unlawful-detainer action with the redemption action, which counsel for NTV apparently thought was pending in the district court. The district court held a hearing on NTV's motion to consolidate, at which Joshua Capps appeared, pro se, along with counsel for NTV. On September 23, 2016, the district court entered an order purporting to transfer the unlawful-detainer action to the trial court, pursuant to Ala. Code 1975, § 12-11-9, which states:

"If a case filed in the ... district court is within the exclusive jurisdiction of the circuit court, the circuit clerk or a judge of the court where the case was filed shall transfer the case to the docket of the appropriate court, and the clerk

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shall make such cost and docket fee adjustments as may be required and transfer all case records."¹

The unlawful-detainer action was assigned case number CV-16-337. On November 17, 2016, purportedly after an ore tenus hearing, the trial court entered an order consolidating the unlawful-detainer action with the redemption action for purposes of trial. See Rule 42, Ala. R. Civ. P.

On July 19, 2018, NTV filed in the unlawful-detainer action a motion for a summary judgment or, in the alternative, for a default judgment against the Cappses. NTV argued that no issue of material fact existed regarding its right to possession of the property, that NTV was entitled to \$51,300 for past-due rent from the Cappses for the period between February 2014 and July 2018, and that NTV was entitled to

¹In the Cappses' motion to dismiss the unlawful-detainer action, see discussion infra, they alleged that the district court "entered an order transferring this action to the [trial] [c]ourt ... on [Joshua Capps's] motion in open court to have the case removed to [the trial] [c]ourt." That was not the basis for the district court's transfer order, however, and Ala. Code 1975, § 12-12-37, provides for removal of actions only when the district court and circuit court have concurrent jurisdiction. As explained, infra, the unlawful-detainer action is within the exclusive original jurisdiction of the district court. Further, even if Ala. Code 1975, § 12-12-37, applied, a removal order must originate in the circuit court, and the Cappses failed to comply with the requirements of that section.

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\$9,343.54 from the Cappses for attorney's fees and expenses. NTV included several affidavits in support of its motion. NTV's motion for a summary judgment requested an order granting NTV possession of the property and ordering the eviction of the Cappses from the property. Alternatively, NTV sought a default judgment against the Cappses on the ground that they allegedly had failed to plead or otherwise offer a defense in the unlawful-detainer action. The trial court set NTV's motion for a hearing to be held on September 27, 2018.

The Cappses did not file a response to NTV's motion for a summary judgment or, in the alternative, for a default judgment. However, on September 26, 2018, counsel for the HBA and Brantley in the redemption action filed a notice of appearance on behalf of the Cappses in the unlawful-detainer action. Also on September 26, 2018, the Cappses filed in the unlawful-detainer action a motion to dismiss that action on the ground that NTV was an unregistered foreign entity under Ala. Code 1975, § 10A-1-7.01, and, thus, lacked the capacity to maintain the unlawful-detainer action. See Ala. Code 1975, § 10A-1-7.21. The Cappses' motion to dismiss requested that the trial court deny NTV's motion for a summary judgment and

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that it dismiss the unlawful-detainer action. Attached to the Cappses' motion to dismiss was an exhibit, which was alleged to be a document from the Alabama Secretary of State; that document is dated September 24, 2018, and states, in pertinent part: "I, John H. Merrill, Secretary of State of the State of Alabama, ... do hereby certify that the entity records on file in this office disclose that [NTV] is not on file as an entity of any type."

NTV's counsel did not appear at the scheduled September 27, 2018, hearing on its motion for a summary judgment, allegedly because of a calendaring error that was made when the notice of hearing was sent on August 8, 2018. Counsel for the Cappses attended the hearing. After the hearing, the trial court entered an order stating that it had held a hearing on NTV's motion for a summary judgment and the Cappses' motion to dismiss, that proper notice of the hearing had been given, and that the Cappses' counsel appeared at the hearing. The September 2018 order continued:

"Upon due consideration of the pleadings and arguments, IT IS ORDERED, ADJUDGED, AND DECREED that:

"Based upon the averments of the parties and their representative counsel, the Court finds that

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[NTV] is without the requisite legal capacity to pursue a lawsuit in any Alabama court[] because it is not duly registered as a foreign entity with the State of Alabama.

"Given [NTV's] failure of legal capacity to maintain an action in Alabama courts, this Court finds that the [Capps's] Motion to Dismiss is hereby GRANTED, [NTV's] Motion for Summary Judgment is DENIED, and the instant action is hereby DISMISSED, without prejudice, costs taxed as paid."

(Capitalization in original.) A few minutes later on September 27, 2018, the trial court entered an order stating that NTV's motion for a summary judgment was moot.

On October 27, 2018, NTV filed a postjudgment motion. NTV argued that it had not had an adequate opportunity to respond to the Capps's motion to dismiss and that the trial court had improperly relied on matters outside the complaint (the only pleading that had been filed in the unlawful-detainer action) in granting the motion to dismiss. NTV also contended that the trial court had erred by not treating the motion to dismiss as a motion for a summary judgment and not applying the procedural requirements of Rule 56(c), Ala. R. Civ. P. NTV further argued that the trial court had erred by not granting its motion for a summary judgment, and it

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attempted to provide an excuse for the failure of its counsel to attend the hearing.

NTV's postjudgment motion was denied by operation of law. See Rule 59.1, Ala. R. Civ. P.; Rule 6(a), Ala. R. Civ. P. On March 8, 2019, NTV timely filed a notice of appeal to the Alabama Supreme Court, which transferred the appeal to this Court, pursuant to § 12-2-7(6), Ala. Code 1975.

We pretermitt any discussion of the issues NTV raises on appeal. In Darby v. Schley, 8 So. 3d 1011, 1013-14 (Ala. Civ. App. 2008), this court stated:

"Although neither party has questioned this court's jurisdiction, 'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Hubbard v. Hubbard, 935 So. 2d 1191, 1192 (Ala. Civ. App. 2006) (quoting Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)). By statute, original jurisdiction over unlawful-detainer actions lies in the district courts. § 6-6-330, Ala. Code 1975 ('The forcible entry upon and detainer, or the unlawful detainer, of lands, tenements and hereditaments is cognizable before the district court of the county in which the offense is committed.'). A circuit court may not exercise jurisdiction over an unlawful-detainer action until the district court has adjudicated the unlawful-detainer action and one of the parties has appealed to the circuit court. See § 6-6-350, Ala. Code 1975 ('Any party may appeal from a judgment entered against him or her [in an unlawful-detainer action] by a district court to the circuit court at any time within seven days after the entry thereof, and [the] appeal and the proceedings thereon shall

in all respects, except as provided in this article, be governed by this code relating to appeal from district courts.'). Accordingly, Darby's unlawful-detainer action was not an action 'within the exclusive jurisdiction of the circuit court,' § 12-11-9, [Ala. Code 1975], and, therefore, the Shelby District Court did not have the authority to transfer that action to the Shelby Circuit Court pursuant to § 12-11-9. Moreover, because the Shelby District Court had not adjudicated Darby's unlawful-detainer action and no appeal from such an adjudication had been taken, the unauthorized transfer of Darby's unlawful-detainer action could not transfer jurisdiction over that action to the Shelby Circuit Court. ...

"Because the Shelby Circuit Court lacked jurisdiction over Darby's unlawful-detainer action, the purported judgment it entered in that action is void and, therefore, will not support an appeal. See, e.g., State Dep't of Revenue v. Arnold, 909 So. 2d 192, 193 (Ala. 2005). Consequently, we must vacate the judgment of the Shelby Circuit Court and dismiss Darby's appeal from that judgment. Id."

(Footnote omitted.) See also, e.g., Ex parte McKinney, 87 So. 3d 502, 510 (Ala. 2011) (stating that the circuit court lacked jurisdiction over an unlawful-detainer claim that had not been previously adjudicated in the district court and that "any purported order [the circuit court] entered in the underlying unlawful-detainer action is void").

Section 35-9A-461(b), Ala. Code 1975, of the Landlord and Tenant Act, states: "District courts and circuit courts, according to their respective established jurisdictions, shall

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have jurisdiction over eviction actions, and venue shall lie in the county in which the leased property is located." Eviction is "[t]he act or process of legally dispossessing a person of land or rental property." Black's Law Dictionary 697 (11th ed. 2019); see also Ala. Code 1975, § 35-9A-141(5) (defining "eviction" for purposes of the Landlord and Tenant Act). Eviction is a remedy that is available (1) in an action for ejectment, which is an action that is within the jurisdiction of the circuit court, see Ala. Const. 1901 (Off. Recomp.), § 142(b); see also, e.g., Jackson v. Davis, 153 So. 3d 820, 826-27 (Ala. Civ. App. 2014) ("Ejectment actions were recognized at common law, but they also may be filed pursuant to the statutory provisions of § 6-6-280(b), Ala. Code 1975. The circuit courts have subject-matter jurisdiction over ejectment actions."); and (2) in an action alleging unlawful detainer under the Unlawful Detainer Act, which is an action that is within the exclusive jurisdiction of the district court. See Ex parte McKinney and Darby, supra; see also Ala. Code 1975, § 6-6-330 ("unlawful detainer ... is cognizable before the district court"), and § 12-12-30 (granting the district court jurisdiction over "civil actions based on

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unlawful detainer"); cf. Ala. Code 1975, § 6-6-331 (The venue provision under the Unlawful Detainer Act, which provides: "The complaints provided for in [the Unlawful Detainer Act] must be filed with, and be tried by, the district court for the county in which the lands or tenements are situated."). As one Alabama law treatise notes, an action alleging unlawful detainer is merely one subset of the broader category of ejectment actions, see I Jesse P. Evans III, Alabama Property Rights and Remedies § 21.2[d] (5th ed. 2012), and "[t]he district courts of the counties within the state enjoy exclusive original jurisdiction over forcible entry and detainer and unlawful detainer actions. ... As with any other action within the jurisdiction of the district court, ... appeals to the circuit court for trial de novo are provided for by statute." Id. at § 21.6 (footnote omitted). "Since exclusive jurisdiction of the possessory action lies in the district court, joinder of the possessory claim with a claim in excess of the jurisdictional limits of the district court

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is not permitted so as to vest jurisdiction in the circuit court." Id.²

Based on the foregoing, the district court had no authority to transfer the unlawful-detainer action to the trial court, and the trial court had no authority to accept and act upon the merits of the unlawful-detainer action upon its transfer. Therefore, the order entered by the trial court granting the Cappses' motion to dismiss the unlawful-detainer

²Evans further notes that

"an action in unlawful detainer or forcible entry and detainer ... is in the first instance triable only before the district court. Previously, jurisdiction of these actions was vested in other inferior courts under various constitutional and statutory provisions relating to court organization. Then, as now, cases arose where claims for monetary awards incident to an action for possession exceeded the jurisdiction of the inferior court. Where the amount of any monetary claim on behalf of the plaintiff exceeds the jurisdiction of the court in which the possessory action is brought, the excess over the jurisdictional limits of the inferior court must be waived, or a separate action relating to the monetary claim must be brought in the court having jurisdiction of the claim."

Id. at § 21.9[a] (footnote omitted). We note that NTV did not purport to file a separate action in the trial court -- which would entail the payment of a proper filing fee in the trial court -- for the portion of its monetary claim that exceeded the jurisdictional limits of the district court.

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action is void.³ A void order will not support an appeal. Accordingly, we dismiss the appeal, albeit with instructions to the trial court that it vacate that void order.

APPEAL DISMISSED WITH INSTRUCTIONS.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ.,
concur.

³We also note that an order denying a motion for a summary judgment generally is not appealable. See, e.g., Continental Cas. Co. v. SouthTrust Bank, N.A., 933 So. 2d 337, 340 (Ala. 2006).